

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH A NGONG
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 21A-UI-17803-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/16/21
Claimant: Appellant (2R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Elizabeth A. Ngong, filed an appeal from the August 10, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant voluntarily quit employment with the employer, Swift Pork Company, without showing good cause for having done so. The parties were properly notified of the hearing. A telephone hearing was held on October 5, 2021. The claimant participated personally. The employer responded to the hearing notice, but did not answer at the number provided at the time of the hearing; the employer did not participate. CTS Language Link provided language services for the claimant.

ISSUE:

Did the claimant quit the employment without good cause attributable to the employer or was she discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a meat cutter from December 13, 2017, until this employment ended on May 2, 2021, when she was discharged.

At some point prior to the end of her employment, claimant was placed at least temporarily in a job that required heavy lifting. Her normal job assignment did not usually require such heavy lifting. Approximately a week prior to May 2, 2021, claimant approached someone in HR and told them that she would prefer to do the job to which she was formerly assigned because she was pregnant and feared for the safety of her pregnancy because of how much heavy lifting was required in the new job. The employer requested a doctor's note, which claimant turned in. She does not read English, so she does not know what the doctor's note said.

On May 2, 2021, claimant was assigned to the more strenuous job. She told her supervisor she could not perform the job because of her pregnancy. The supervisor took claimant to HR,

where they asked for her ID and dismissed her to go home. Claimant thought the employer might call her back to work at some point, and she waited three weeks before concluding her employment had been terminated.

The issue of claimant's ability to and availability for work has not been the subject of an initial determination by Iowa Workforce Development at this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871—24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

Claimant did not intend to sever the employment relationship. Instead, in response to her concerns about her duties, she alleges she was dismissed from work with no further contact from the employer thereafter. Claimant did not receive any warnings indicating that her employment was in jeopardy, nor had she received prior warnings regarding conduct similar to that which preceded the end of her employment. There is no allegation that claimant engaged in disqualifying misconduct that resulted in her discharge. No disqualification is imposed as to claimant's separation from employment.

DECISION

The August 10, 2021, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

REMAND:

The issue of claimant's ability to and availability for work is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Alexis D. Rowe
Administrative Law Judge

October 7, 2021
Decision Dated and Mailed

ar/mh